NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19929
THIRD DIVISION Docket Number CL-20120

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(George P. Baker, Richard C. Bond and Jervis Langdon, Jr.,
(Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7259) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on F. P. Leonard, Chauffeur, Plant Security Fire Department, Penn Central Railroad, Altoona, Pa.

(b) Claimant F. P. Leonard's record be cleared of the charges brought against him on January 24, 1972.

(c) Claimant F. P. Leonard be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: Claimant was employed as a Chauffeur in Carrier's Plant Security Fire Department. On January 21, 1972, while on duty, Claimant was observed by two Carrier police officers in the act of pumping gasoline from a Company tank into the gas tank of his own truck and into a metal container in the bed of the truck. Claimant was arrested by the officers and taken before a magistrate and charged with larceny. On the following day he entered a plea of guilty and was ordered to make restitution of $6.74 for the gasoline and to pay court costs. On February 8, 1972, following a hearing, Claimant was dismissed from service, having been found guilty of the charge of appropriating company gasoline as indicated above.

Petitioner contends that Claimant was not afforded a fair and impartial hearing, es contemplated by the Rules, in that the hearing officer acted es accuser for the Carrier as well a witness against Claimant. The record indicates that this argument was not raised prior to the submission to the Board and therefore cannot be considered. Petitioner also contends that Claimant was subject to "double jeopardy" in that he was tried before the magistrate for the same offense which resulted in his being disciplined by Carrier. We find no merit in this argument since a Carrier's right to discipline an employee is unrelated to the actions of criminal or civil courts; the criminal law concept alluded to is not relevant to disciplinary actions in any event.

Contrary to Petitioner's position, we find that the record reveals a fair and impartial investigation. The guilt of Claimant was well supported and admitted by him. The discipline imposed was neither arbitrary nor capricious, in spite of the smell dollar value of the gasoline involved . . . ..dishonesty must be considered a serious offense.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within rhe meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19929
THIRD DIVISION Docket Number CL-20120

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(George P. Baker, Richard C. Bond and Jervis Langdon, Jr., Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7259) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on F. P. Leonard, Chauffeur, Plant Security Fire Department, Penn Central Railroad, Altoona, Pa.

(b) Claimant F. P. Leonard's record be cleared of the charges brought against him on January 24, 1972.

(c) Claimant F. P. Leonard be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: Claimant was employed as a Chauffeur in Carrier's Plant Security Fire Department. On January 21, 1972, while on duty, Claimant was observed by two Carrier police officers in the act of pumping gasoline from a Company tank into the gas tank of his own truck and into a metal container in the bed of the truck. Claimant was arrested by the officers and taken before a magistrate and charged with larceny. On the following day he entered a plea of guilty and was ordered to make restitution of $6.74 for the gasoline and to pay court costs. On February 8, 1972, following a hearing, Claimant was dismissed from service, having been found guilty of the charge of appropriating company gasoline as indicated above.

Petitioner contends that Claimant was not afforded a fair and impartial hearing, as contemplated by the Rules, in that the hearing officer acted as accuser for the Carrier as well a witness against Claimant. The record indicates that this argument was not raised prior to the submission to the Board and therefore cannot be considered. Petitioner also contends that Claimant was subject to "double jeopardy" in that he was tried before the magistrate for the same offense which resulted in his being disciplined by Carrier. We find no merit in this argument since a Carrier's right to discipline an employee is unrelated to the actions of criminal or civil courts; the criminal law concept alluded to is not relevant to disciplinary actions in any event.

Contrary to Petitioner's position, we find that the record reveals a fair and impartial investigation. The guilt of Claimant was well supported and admitted by him. The discipline imposed was neither arbitrary nor capricious, In spite of the small dollar value of the gasoline involved . . . ..dishonesty must be considered a serious offense.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved In this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.